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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/807,947

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Marc Radow

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,947	<b>Applicant(s)</b> RADOW, MARC	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2008 and 28 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-48 is/are pending in the application.
- 4a) Of the above claim(s) 18,34,36-38,42 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16,17,19-33,35,39-41 and 44-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Upon reconsideration, the Notice of Non-Compliant amendment, mailed 3/27/08, and originally noted in the Office action mailed 11/27/07, is hereby withdrawn.

Applicants response, filed 12/28/07, to the Election of Species, mailed 11/27/07, has been received. Applicant has elected Species I with traverse. Applicant traverses the election requirement as not requiring separate searches. Contrary to what is urged, the searches would not directly overlap and the examiner has found there would be an undue burden.

The election of Species requirement set forth in the Office action mailed 11/27/07 is therefore made FINAL . Accordingly, claims 18,34,36, 37, 38,42, and 43 are withdrawn from further consideration as being drawn to non-elected inventions, and an action on the merits of claims 16,17,19-33,35,39-41 and 44-48 follows below.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

In regard to claim 16, Albert discloses a composition comprising a liquid sweetener such as corn syrup and water, wherein the composition would be capable of being applied to a rim of a beverage container. Although the surfactant and viscosity/texture modifier are both listed as being present in the amount of 0%, and thus not present, Albert also discloses the composition can include a polysaccharide, such as a gum, which would be a viscosity/texture modifier. In regard to claims 20-22, the particular viscosity selected is seen to have been an obvious result effective variable,

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routinely determinable. In regard to claim 19, which recites corn syrup and sugar, since Albert discloses using corn syrup and sugar, to employ both as both binders and sweeteners is seen to have been an obvious result effective variable. In regard to claim 32, Albert discloses gum.

Claims 16,17,19-33,35,39-41 and 44-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albert (2004/0033293) in view of Luhadiya (2002/0187220), or vice versa, i.e., Luhadiya et al ('220) in view of Albert('293), both further in view of Maegli (5,298,268), Chen et al (2004/0109932), Schleider (WO 99/09871), Emig (2004/0005385), Rhode et al (2002/0062741), Fiorella (3,824,322), Holloway et al (4,828,858), and Hoover (4,647,463).

The claims are also rejected employing Chen et al ('932) as the primary reference over the same group of references.

In regard to claim 16, as noted previously, Albert discloses a composition comprising, for example, a liquid sweetener such as corn syrup, water, and a gum, which gum would inherently act as a viscosity/texture modifier. The composition is an edible adhesive composition to be applied to a food product, so that an edible particulate material can then be applied to the edible adhesive coating on the food product. Thus, Albert discloses edible, adhesive coating compositions for application to a surface for receiving particulate material. Claim 16 recites that the edible composition also contains a surfactant. As evidenced by Luhadiya, it was conventional in the art to include a surfactant in an edible, adhesive coating composition which composition is applied to a surface which is then to receive a particulate coating. To modify Albert and

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add a surfactant to the edible, adhesive coating composition for its art recognized and applicants intended function, when it was conventional to have added surfactants to an edible, adhesive coating composition would therefore have been obvious. Similarly, employing Luhadiya as the primary reference, claim 16 differs from Luhadiya in employing modified starch as a main ingredient whereas the claim recites liquid sweetener. As evidenced by Albert, sweeteners, are, of course, notoriously conventional ingredients of edible, adhesive coating compositions. To modify Luhadiya and substitute one conventional main ingredient for another conventional main ingredient, wherein they are both being employed in an edible, adhesive coating composition for their tackiness would have been obvious. Finally, employing Chen et al as the primary reference, Chen et al discloses an edible, adhesive coating composition for application to a straw so that after the coating is applied a particulate can be applied to the coating on the straw. Chen is silent as to the amount, if any, of sweetener. Chen et al discloses citric acid for flavoring, a surfactant, a plasticizer (propylene glycol, which also has surfactant properties), water and gums. Since the art taken as a whole discloses that sweeteners, are a notoriously conventional edible, adhesive coating composition ingredient, to modify Chen et al and provide a sweetener would have been an obvious result effective variable. Maegli, Schleider, Emig, Rohde et al, Fiorella, Holloway et al, and Hoover are all relied on as further evidence that all of the recited ingredients are notoriously conventional ingredients in edible, adhesive coating compositions, and it would therefore have an obvious result effective variable to routinely manipulate the ingredients to achieve the properties desired for the particular

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environment. That is, at best, it would have been an obvious routine optimization. Note, for example, that Luhadiya discloses the recited viscosity; Maegli discloses adjusting the viscosity and surface tension, the use of a polyhydric alcohol, which is a known surfactant, and is used in the recited range, and that the particulate seasoning should not get wet; Schleider discloses that starches and sugars are known adhesive coating materials; Emig discloses polysaccharide edible, adhesive coating compositions; Rohde et al discloses starch based edible, adhesive coating compositions; Fiorella discloses sugars, corn syrups, gums and plasticizers in edible, adhesive coating compositions; Holloway et al discloses corn syrup, sugar water and gums in edible, adhesive coating compositions and Hoover discloses sugar, honey water and other ingredients in an edible, adhesive coating composition. All of the remaining claims have been fully and carefully considered but are found to have been unpatentable for the reasons given above. That is, the art taken as a whole clearly evidences the fact that it was well established to provide compositions for film forming (and binding particulates thereto), i.e., edible, adhesive coating compositions, wherein the compositions were not just water or a juice (as applicant has disclosed), but ingredients that were more viscous and binding than just water or naturally occurring liquids per se, and that applicants recited ingredients are all notoriously well known ingredients in film/adhesive/bonding compositions (i.e. edible, adhesive coating compositions) and that applicants ingredients are being employed for their well known and intended function. One of ordinary skill in the art would be fairly led to manipulate the ingredients to achieve the results desired.

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All of applicants remarks have been fully and carefully considered but are not found to be convincing, essentially for the reasons given above. Not only is every one of applicants recited ingredients known to be a food additive, but the art taken as a whole discloses that everyone of the ingredients are known to have been used in edible, adhesive coating compositions. The art taken as a whole also discloses that the ingredients have been used in edible, adhesive coating compositions in the recited ranges. It has been urged that the composition has specific use in the context of applying an edible, adhesive coating composition to a glass. In response, it is noted that the claims recite a composition. They do not recite a method of coating a glass nor do they recited a coated glass. Therefore, the urging is directed to an intended use. The composition as claimed could be used to coat any product, edible or inedible, as would the edible, adhesive coating compositions of the references. Any urging relative to the intended use of the composition is also not convincing since the issue would be similar whether one is coating an edible or inedible. For example, drippiness or running of the coating composition would be a negative if one were coating edible products or inedible products. Note, too, that the art taken as a whole also discloses edible, adhesive coating compositions for use in a method for coating inedibles such as a straw. Note, too, that any edible, adhesive coating composition that contains polysaccharides such as gums will inherently be more viscous than one that does not contain polysaccharides.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-

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272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794